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EX PARTE OR LATE FILED

James K. Smith
Director
Federal Relations

September 26, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, DC 20554

RECEIVED

SEP 27 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

RE: Ex Parte Statement
Docket 92-297

Dear Mr. Caton:

Ameritech submits the attached response for inclusion in the record of the above referenced proceeding.

Sincerely,

A handwritten signature in dark ink, appearing to read "James K. Smith", written in a cursive style.

Attachment

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RESPONSE OF AMERITECH CORPORATION TO THE REPLY COMMENTS SUBMITTED BY THE FTC STAFF, DEPARTMENT OF JUSTICE, AND THE ATTORNEYS GENERAL IN CC DOCKET NO. 92-297

FTC Staff, DOJ, and Attorneys General from several states ("Commenters") filed Reply Comments in 92-297 recommending eligibility restrictions on LECs and cable TV companies in the potential bidding for spectrum for LMDS. The rationale for restrictions is based on a theory of harm which turns out to have no empirical basis and which is the product of erroneous or highly speculative assumptions about the LMDS market, regulation, and potential LEC conduct. The theory therefore cannot serve as a basis for restricting spectrum eligibility. Indeed, if restrictions had been as important as the Commenters indicate, the Commenters should have raised their concerns during the Comment period to give other parties the opportunity to respond to their concerns. Ameritech offers these notes in response to the gap in the public record.

The Commenters' theory of public harm embraces some common concerns and themes:

- LECs and cable operators may pay premium prices to outbid rivals and thereby assure themselves of future monopoly profits (Attorneys General 3, DOJ 2, FTC Staff 2).
- LECs may warehouse the spectrum (Attorneys General 4, DOJ 2, FTC Staff 2).
- LECs may acquire spectrum simply to pre-empt competition (Attorneys General 3, DOJ 3, FTC Staff 2).
- No harm would come to the public if LECs are precluded from bidding because LECs have not proven any economies of scope (Attorneys General 6, DOJ 8, FTC Staff 4).

There are numerous errors or speculative assumptions used to derive these themes which invalidates the Commenters' theory of harm as a basis for restricting spectrum eligibility:

1. *Commenters erroneously assume that the Telecom Act and its implementation has no impact on LECs.*
 - Commenters presume, without evidence, that a bidder for LMDS is a monopolist unchallenged by laws and regulations regarding the use, pricing, and availability to other competitors of its productive assets: assumptions which do not characterize the LECs in any market.
 - Market share analysis, which is used as the basis for the public harm theory by DOJ, is inherently static and backward-looking and is therefore incapable of indicating the degree of competition in a technologically changing market like telecommunications. DOJ and others fail to recognize that ease-of-entry (as brought about by new technologies as well as by the Act) is important to the analysis of market power, while share is not.
 - Commenters assume that competitors require special assistance in making markets competitive, despite the fact that many of the competitors are larger and more highly capitalized than the LECs for whom exclusion is sought.
 - Ameritech submits that eligibility restrictions serve special interests of non-LEC competitors, but is antithetical to competition.
2. *Commenters implicitly, but erroneously, assume that LECs will pay premium prices to buy up LMDS and all future technologies.*
 - Commenters describe how a firm with market power might buy up a new essential facility to protect its market position. A world view of a single new essential facility is at odds with the entire history of the telecommunications industry, which is one of accelerating technological change. Restating this key assumption in the plural -- by assuming that more than one new facility becomes available, as is more realistic -- exposes the flaws of the Commenters' theory. In a more realistic world where more than one new technology becomes available, the Commenters' theory requires that a LEC buy up and warehouse (or use sub-optimally) all new technologies. A LEC that was considering buying one technology -- and one whose ultimate uses and value is uncertain -- to tuck away would have to consider in its calculations the impact that any additional new technologies would have on the success of its buy-and-hold strategy. Given the real-world impossibility of forecasting how new facilities might emerge, and how old ones might be used in new ways (both issues ignored by the Commenters), the better and more likely strategy is to simply act in a pro-competitive manner.
 - Contradicted by evidence in the corporate world, the Commenters assume that LEC shareholders would countenance the warehousing of billions of dollars of assets for an untested asset, LMDS spectrum, and for the other possible assets (spectrum, new technologies, and the like) that might follow.

3. *Commenters create a delicate chain of reasoning to support their theory of harm.*
 - The Commenters theory of public harm requires a delicate chain of reasoning to say that LECs should be excluded from bidding for LMDS. Commenters reason that LMDS might serve as a substitute for the local loop and that this substitute might be used by entrants to solicit small business and residences. The chain of reasoning requires speculative assumptions about (1) the likely use of a new technology and (2) the market to which it likely would be aimed. If either link in this delicate chain is broken the theory collapses and the policy prescriptions turn out to be wrong and damaging.
 - The first chapter on the usefulness of LMDS has not been written: LMDS technology is new and untested. It is wildly speculative to leap to conclusions about the ultimate use of LMDS, and the markets where it is likely to be deployed.
 - The Commenters' key assumption that LMDS could serve as a substitute for the local loop is possible; but so, too, will cellular, PCS, cable telephony (and, of course, unbundling, and resale) serve as substitutes --all of which are more completely developed than LMDS and all of which are ignored by the Commenters' theory. Indeed, by the time LMDS is adequately developed (which could be 2 or 3 years or more, given the experience of these other technologies), the entire telecommunications market situation will have changed at least as much as has been seen in the past 2-3 years. The Commenters' assumption that LMDS is a ready-for-market substitute for the local loop is wrong.
 - The Commenters recommend a policy prescription today whose first possible benefits will appear 2-3 years hence, but their discussion is based on a view of the world as it appears to them today. No Commenter indicates what markets might look like during the period when LMDS likely will be deployed. (Indeed, the only indication that change may occur in the future is provided by DOJ's ill-conceived recommendation that the 14-point checklist is not strict enough to permit LECs to own LMDS spectrum rights and that additional restrictions are needed).
 - Ameritech submits that new technologies like LMDS generate new uses and require the development of new markets: LECs should be permitted to participate in new technologies and new markets. It is misguided to base public policy on the hope -- with no evidence -- that LMDS' highest and best social value is as another substitute for the local loop along with cellular, PCS, cable telco, unbundling, and resale.
 - Ameritech believes that LECs could use the spectrum to offer new services as well as engage in direct competition with cable TV companies (Ameritech has an annual program to deploy HFC in its area and has to date obtained 23 franchises). LMDS could offer a faster roll-out period and could offer customers more choices, faster.
4. *Commenters erroneously conclude that the benefits of eligibility restrictions will outweigh the costs without any empirical evidence.*
 - The Commenters fail to quantify or even provide probabilities to support the likelihood that the events they envision will actually occur, yet they recommend a policy prescription with lasting implications.
 - The Commenters' proposed policy of exclusion creates a post-1996 Act precedent to treat an entire segment of the telecommunications industry in a discriminatory fashion.
 - Eligibility restrictions would restrict customer choice in buying bundled services from LECs if they chose too. Their personal choice would have been vetoed by government action.
 - Eligibility restrictions micro-manage the development of the telecommunications infrastructure.